

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT G. CASEY and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Juneau, AK

*Docket No. 99-2578; Submitted on the Record;
Issued October 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant established that his hearing loss was causally related to his accepted employment exposure.

Appellant, a 65-year-old mine inspector, filed an occupational claim on July 31, 1997 alleging that he sustained a hearing loss as a result of his employment duties. He identified June 10, 1997 as the date he first became aware of his employment-related hearing loss. After initial development of the record, the Office of Workers' Compensation Programs referred appellant for examination by Dr. Charles F. Tschopp, a Board-certified otolaryngologist. In a report dated November 14, 1997, Dr. Tschopp diagnosed high-tone sensorineural hearing loss and he indicated that appellant's hearing loss was not due to noise exposure encountered during his federal civilian employment. He explained that a recent audiogram administered on October 30, 1997 showed hearing loss consistent with presbycusis for a 60-year-old male. The Office subsequently referred the record to its medical adviser, who concurred with Dr. Tschopp's assessment regarding the cause of appellant's hearing loss.

In a decision dated December 4, 1997, the Office denied compensation based on appellant's failure to establish a causal relationship between his hearing loss and his employment-related noise exposure. The Office explained that Dr. Tschopp had attributed appellant's hearing loss to the normal aging process. The December 4, 1997 decision was subsequently affirmed by an Office hearing representative in a decision dated May 14, 1998 and finalized May 15, 1998. Thereafter, appellant sought reconsideration on four occasions. The Office, however, denied modification of its prior decision. The Office issued its most recent merit decision denying modification on July 23, 1999.

The Board finds that appellant failed to establish that his hearing loss was causally related to his accepted employment exposure.

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.¹ Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work for which he claims compensation is causally related to the accepted injury.²

The Office initially denied compensation based on Dr. Tschopp's November 14, 1997 report wherein he attributed appellant's hearing loss to the normal aging process. Appellant was subsequently examined by Dr. John F. Raster and Dr. Jack A. Smith, both of whom are Board-certified in otolaryngology. In a report dated October 23, 1998, Dr. Raster diagnosed sensorineural hearing loss "with a likely cause being noise exposure and presbycusis." Dr. Raster further explained that "it is often difficult to determine what the exact cause is and certainly what percentage ... each" contributed to appellant's hearing loss. In a follow-up report dated February 16, 1999, he stated that "noise exposure has certainly caused some of the sensorineural hearing loss from which [appellant] suffers." Again, Dr. Raster conceded that he "[could not] estimate how much would be related to ... previous noise exposure, versus underlying pathology." Dr. Smith, in a report dated March 23, 1999, stated that appellant's "increase in hearing loss over his years of employment would probably be related to the increased noise environment which he was experiencing." He further commented that "[a]lthough this may be related to age, the progressive loss has to be related to increased noise environment." The Office medical adviser reviewed Dr. Smith's opinion and noted, *inter alia*, that his explanation was ambiguous and that the March 23, 1999 audiogram which Dr. Smith interpreted showed a pattern that was clearly indicative of hearing loss due to presbycusis rather than noise-induced hearing loss.

The Board finds that Dr. Smith's March 23, 1999 opinion is ambiguous. Dr. Raster's October 23, 1998 and February 16, 1999 reports are similarly flawed. Neither physician provided a clear, unequivocal and rationalized explanation for attributing appellant's hearing loss, in part, to his accepted occupational exposure. In view of the equivocal nature of the opinions of Drs. Raster and Smith, this evidence is of diminished probative value and therefore, is insufficient to satisfy appellant's burden of establishing a causal relationship between his claimed condition and his employment exposure.³ As the record lacks sufficient probative medical opinion attributing appellant's hearing loss to his accepted employment exposure, the Office properly denied compensation.

¹ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) ("occupational disease or illness" and "traumatic injury" defined).

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Ern Reynolds*, 45 ECAB 690, 696 (1994).

The July 23, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 6, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member